IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4991 of 2006
with
CRIMINAL MISC.APPLICATION No. 4992 of 2006
with
CRIMINAL MISC.APPLICATION No. 4994 of 2006
with
CRIMINAL MISC.APPLICATION No. 4995 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALIDAS KANTILAL PATEL PROP. OF BALAJI ENGINEERING - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR GIRISH K PATEL for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR YOGESH S LAKHANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/08/2007

ORAL JUDGMENT

As common question of law and facts arise in these group of applications/petitions, they are being disposed of by this common judgment and order.

2. Criminal Misc. Application No.4991/06 is filed by the applicant, - original accused to quash and set aside the complaint being criminal case No.5395 of 2005 pending in the Court of ld. JMFC (Traffic), Rajkot and the order dated 20-5-2005 of the ld. JMFC issuing the summons against the applicant for the offence u/s 138 of the Negotiable Instrument Act, 1938 (for short “the Act”).

Criminal Misc. Application No.4992/06 is filed by the applicant, - original accused to quash and set aside the complaint being criminal case No.9459 of 2005 pending in the Court of ld. JMFC (Traffic), Rajkot and the order dated 16-9-06 of the ld. JMFC5 issuing the summons against the applicant for the offence u/s 138 of the Act.

Criminal Misc. Application No.4994/06 is filed by the applicant, - original accused to quash and set aside the complaint being criminal case No.6970 of 2005 pending in the Court of ld. JMFC (Traffic), Rajkot and the order dated 13-7-2005 of the ld. JMFC issuing the summons against the applicant for the offence u/s 138 of the Act.

Criminal Misc. Application No.4995/06 is filed by the applicant, - original accused to quash and set aside the complaint being criminal case No.5733 of 2005 pending in the Court of ld. JMFC (Traffic), Rajkot and the order dated 31-5-2005 of the ld. JMFC issuing the summons against the applicant for the offence u/s 138 of the Act.

3. The aforesaid respective complaints are filed by the respondent No.2 herein in all the applications against the respective common applicants Kalidas K. Patel for the

offence u/s 138 of the Act alleging inter alia that the respective cheques were issued by the applicant towards the part payment of the goods supplied by the complainant and purchased by the applicant. However, when the said cheques were deposited in the Bank, the same came to be dishonoured/returned by the bank with an endorsement “Payment stop by drawer” and the statutory notice was served upon the applicant, the payment was not made within the stipulated time and therefore, it was alleged that the applicant has committed the offence u/s 138 of the Act. It appears from the complaint that it is the case of the original complainant that the complainant sold goods worth Rs.3,50,000/- to the petitioner on 2-1-05 and again the complainant sold the goods worth Rs.2,23,246/- to the petitioner on 11-2-05. Thus, the petitioner owed Rs.6,26,831 to the complainant towards purchase of the goods. In the aforesaid complaints, the ld. Magistrate issued summons against the applicant, - original accused for the offence u/s 138 of the Act and therefore, the common applicant, - original accused has preferred the present applications u/s 482 of Criminal Procedure Code to quash and set aside the aforesaid complaints.

4. Shri Girish K. Patel, learned advocate appearing on behalf of the applicant has submitted that the cheques in question were obtained by the complainant by pressure, for which the applicant had lodged private complaint before the ld. Judicial Magistrate, Ahmednagar and the same was prior to filing of the complaints in question. It is also further submitted by him that the cheques were not issued for discharge of legal dues. It is submitted that as per the complaint, the goods were sold to the petitioner on 2-1-05 and on 11-2-05 and the cheque in

question was given by the petitioner to the complainant at Rajkot on 11-2-05. However, the applicant was in judicial custody on 11-2-05 in a criminal case filed against the applicant and others and therefore, the story with regard to purchasing the goods by the petitioner on 11-2-05 at Rajkot and that giving cheques in question to the complainant on 11-2-05 at Rajkot is not believable. It is also further submitted that even on 2-1-05 also, the petitioner was at Malegaon (Maharashtra) and therefore, when the applicant was at Malegaon, there was no question of purchasing the goods by the applicant even on 2-1-05 at Rajkot and therefore, it is requested to quash and set aside the complaints which according to the applicant is nothing but an abuse of process of law. Shri Patel has relied upon supporting documents annexed with the applications in support of his above submission and has requested to quash the complaints in question.

5. The applications are opposed by Shri YS Lakhani, learned advocate appearing on behalf of the respondent No.2, - original complainant. It is submitted that on considering the averments and allegations in the complaints, all the ingredients of the offence u/s 138 of the Act are satisfied and a case is made out against the applicant for the offence u/s 138 of the Act. It is submitted that whatever has been submitted on behalf of the applicant during the course of the submission as well as in the respective applications are all his defence which are required to be considered at the time of trial. It is also further submitted by him that to quash the complaints in questions at this stage accepting the case of the applicant that the cheques in question were obtained by the complainant by pressure by sending 4 gundas would be prejudging the complaint pending in the

Court of ld. Judicial Magistrate, Ahmednagar and convicting the original complainant and others in the said complaint. It is submitted that whether the applicant was at Malegaon on 2-1-05 as alleged and/or whether the goods were purchased in person and the cheques were given in person at Rajkot, all are defences which are required to be considered at the time of trial and therefore, it is requested to dismiss all the applications.

6. Shri KT Dave, ld. APP has adopted the submissions made on behalf of the complainant and has submitted that the present applications are required to be dismissed as a prima facie case is made out against the applicant for the offence u/s 138 of the act and that all the submissions and the contentions which are raised here are required to be considered at the time of trial.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. It is the case of the original complainant that the complainant sold the goods to the applicant on 2-1-05 and 11-2-05 in all worth Rs.6,26,831/- and the different cheques were issued towards the part payment by the applicant, original accused and when the said cheques were deposited which are returned with an endorsement “stop payment by drawer”. It is also the case of the original complainant that thereafter, the applicant was served with the statutory notice as required under the Act and within the stipulated time, the payment was not made and therefore, the offence has been committed u/s 138 of the Act and considering the averments and the allegations in the complaint, the learned trial Court has

issued the summons upon the applicant herein for the offence u/s 138 of the Act. Against which, it is the case of the applicant herein that the cheques in question were obtained by the original complainant by pressure on hiring gundas and for which the applicant has lodged private complaint before the ld. Judicial Magistrate, Ahmednagar and that the cheques were not issued for discharge of legal dues. At the outset, it is required to be noted that initially the applicant filed complaint before the police. However, after investigation, the police submitted “C” summary report submitting that the dispute is of civil nature and that the allegations that four unknown persons came there and obtained the cheques, their identity is not disclosed. However, the ld. Judicial Magistrate, Ahmednagar has not accepted the “C” summary report. Be that as it may, whether the cheques in question were obtained by pressure or not is a question which is required to be considered and dealt with either at the time of considering the trial before the ld. Magistrate, Ahmednagar before whom the case is pending and/or before the trial Court. Whether cheques in question were obtained by pressure or not is also disputed question which is required to be considered at the time of trial in the present criminal complaints. Therefore, on the aforesaid ground, the impugned complaints are not required to be quashed and set aside in exercise of powers u/s 482 of Criminal Procedure Code. All the submissions and contentions made on behalf of the applicant herein are all the defences which are required to be considered at the time of trial on leading proper appropriate evidence. Whether the applicant was at Malegaon and has not gone to Rajkot and/or whether the cheques were issued for discharge of legal dues or not are all questions which are required to be considered at

the time of trial.

9. What is required to be considered while issuing the summons by the ld. Magistrate is whether a prima facie case is made out for the offence u/s 138 of the Act or not and all the ingredients of the offence u/s 138 of the Act are satisfied or not. Considering the averments and allegations in the complaints, it prima facie discloses the case u/s 138 of the Act and all the ingredients of the offence u/s 138 of the Act are satisfied. Under the circumstances, it cannot be said that the ld. Magistrate has committed any error in issuing the summons upon the applicant for the offence u/s 138 of the Act.

10. There is another reason also in not quashing and setting aside the impugned complaints. It is the contention of the applicant that as the cheques in question were obtained by pressure and for which even prior to filing of the impugned complaints, a private complaint was filed before the ld. Magistrate, Ahmednagar and therefore, the complaint should be quashed. If the impugned complaints are quashed at this stage accepting the contentions and submissions on behalf of the applicant that the cheques in question were obtained by pressure, then it would be prejudging the case pending before the ld. Judicial Magistrate, Ahmednagar and holding that the cheques in question are obtained by the original complainant by pressure. Meaning thereby to convict the original complainant herein without any trial by the competent Court. Under the circumstances, on the aforesaid ground, the impugned complaints are not required to be quashed and set aside at this stage.

11. For the reasons stated above, both the applications

fail and are accordingly dismissed. Rule discharged. Ad interim relief, if any granted earlier stands vacated forthwith.

(M.R. Shah, J.)

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